4. (Amended) A process of forming a semiconductor device, according to claim 1, [wherein the second chemistry includes nitrogen in an amount less than about ten percent of gas flow in the second chemistry, and] wherein the second chemistry includes a diluted gas mixture of nitrogen.

**Remarks**

Favorable reconsideration of this application is requested in view of the following remarks and the above amendments. For the reasons set forth below, Applicant respectfully submits that the claimed invention is allowable over the cited references.

In the Office Action dated September 21, 2000, claims 1-7 stand rejected under Section 103(a) as being unpatentable over *Grimbergen et al.* (U.S. Patent No. 6,081,334) in view of *Witek et al.* (U.S. Patent No. 5,627,395), and claims 8-21 stand rejected under Section 103(a) as being unpatentable over *Grimbergen et al* and *Witek et al* as applied to claims 1-7 and further in view of *Witek et al.*

With respect to the rejection of claims 1-7 and to the rejection of claims 8-21, Applicant respectfully submits that the rejection lacks the necessary motivation as is required when a rejection under 35 U.S.C. 103 is based on a combination of references. The Office Action acknowledges that the '334 reference fails to teach the invention as a whole, including the performance of a second plasma etch. In an attempt to overcome this deficiency, the Office Action alleges that one skilled in the art, in view of the '395 reference, would be motivated to correspondingly modify the asserted teaching of the '334 reference since the '334 reference "uses a $HBr/Cl_2$ plasma in the second etching step used to etch the device layer ... in order to produce an expected result" and that the process parameters would be readily recognized by the skilled artisan. When considering whether the asserted prior art provides such motivation, it is Applicant's understanding that long-standing case law has emphasized that such a rejection cannot be maintained when either the allegedly expected result is not evidenced (*e.g., In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)* (the issue is not whether the prior art could be modified to correspond to the invention claimed, but rather whether the prior art would have lead the artisan to the invention claimed) or the claimed subject matter is directed to a result not previously recognized by the prior art. In this instance, the subject matter of claim 2 (now

reflected in amended claim 1 and discussed, *e.g.*, at page 10, lines 6-8 of the specification) is not previously recognized by the prior art. Each of the other pending claims includes related subject matter also not previously recognized by the prior art and explained in the specification, e.g., at pages 10-12.

In view of the above, Applicant believes that each of the objections and rejections presented in the Office Action has been overcome. A favorable response is earnestly requested.

Respectfully submitted,

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